2001-014-882

AMERICAN COUNCIL OF
ENGINEERING COMPANIES

June 28, 2001

General Services Administration
FAR Secretariat
ATTN: Laurie Duarte
1800 F Street, NW. Room 4035
Washington, DC 20405

Re: Presentation for June 18, 2001 Public Meeting
FAR case: 2001-014

Dear Ms. Duarte:

The American Council of Engineering Companies, formerly the American Consulting Engineers Council, ACEC, strongly opposes the proposed blacklisting rule, 65 FR 40830. ACEC is the business association of America's engineering industry, representing about 6,000 independent engineering companies throughout the United States engaged in the development of America's transportation, environmental, industrial, and other infrastructure. Founded in 1910 and headquartered in Washington, DC, ACEC is a national federation of 51 state and regional organizations.

The engineers of our member firms are licensed professionals who uphold codes of ethics and are already subject to the loss of their license to practice if found guilty of illegal or unethical practice. Moreover, current federal procurement law and the Federal Acquisition Regulation (FAR) provide ample authority for disqualifying firms that fail to uphold laws applying to government contractors.

ACEC has been working with the new Administration on its government reform policies and efforts to outsource more services to the private sector. Our member firms feel confident that this effort will be tempered by a commitment to enforce the federal contracting laws.

The proposed regulation would allow government contracting officers to disqualify any consulting engineering firm from receiving a federal contract if there is "relevant credible information" that the employer does not have "satisfactory compliance with federal laws including tax laws, labor and employment laws, environmental laws, antitrust laws, and consumer protection laws." The standards that this crucial decision of which employer does, or does not, qualify for a contract are completely ambiguous. There are, in fact, no criteria specified except that "greatest weight" is to be given to certain kinds of convictions, civil judgments, or preliminary decisions by federal agencies—which can include mere complaints issued by an agency, or a decision by an administrative law

1015 Fifteenth Street NW • Washington DC 20005-2605

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judge, even if the underlying allegations are still pending and under review. Indeed, pure allegations could still be considered. No contracting officer has the ability to make these kinds of judgments covering a vast matrix of complicated laws.

ACEC believes that adequate protections already exist under procurement law to protect the integrity of the procurement process and to ensure that taxpayers receive the best bargain for their money. The proposed changes are completely unnecessary and counter to the efforts to streamline the government procurement process.

The result will be unnecessary delays (more bid protests and legal challenges), reduced competition, and higher costs for government goods and services to be born by the taxpayer.

We believe that the proposed regulation was an attempt by the last Administration to circumvent the legislative process by adding, through regulation, a major, new draconian penalty—disqualification from government contracts. Any changes to these laws should receive full consideration by the Congress, rather than be adopted through the back door. All 11th-hour actions taken during the final days of the last Administration should be strictly scrutinized.

America's consulting engineering firms are opposed to the proposed federal regulations because it is a de facto amendment to the remedial and penalty provisions of scores of laws and adds a new punitive sanction - denial of a federal contract ("blacklisting") - that punishes employers, their employees, and local communities through the loss of work.

ACEC members strongly support the stay and we seek prompt revocation of the blacklisting regulation.

Sincerely,

Jack Kalavritinos
Director, Government Affairs